

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion and Sedimentation Control

38 M.R.S.A. § 420-C

and

Storm Water Management

38 M.R.S.A. § 420-D

and

Title 38, Section 439-B, Contractors Certified in Erosion Control

STATUTE



EROSION AND SEDIMENTATION CONTROL

38 M.R.S.A. § 420-C

STORM WATER MANAGEMENT

38 M.R.S.A. § 420-D

and

CONTRACTORS CERTIFIED IN EROSION CONTROL

38 M.R.S.A. § 439-B

Note Concerning the Text

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- *PL 2009, ch. 538, An Act Close Loopholes in Environmental Laws. Effective July 12, 2010.*

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The Department of Environmental Protection has included texts of enacted, unallocated law provisions relating to the codified statutory provisions in this publication. "Unallocated law" provisions are not allocated to the Maine Revised Statute, and are often temporary in effect. Such housekeeping provisions may include application, transition, implementation, appropriation and sunset provisions. Unallocated law has the same legal effect as codified law. The department has not included unallocated law provisions related to subjects such as reporting and rulemaking requirements.

The table of contents and footnotes are not part of the statutory text. Not all previous amendments are indicated.

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38 § 420-C. Erosion and sedimentation control

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.

A person who owns property that is subject to erosion because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials shall take measures in accordance with the dates established under this paragraph to prevent unreasonable erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. Adequate and timely temporary and permanent stabilization measures must be taken and maintained on that site to prevent unreasonable erosion and sedimentation. This paragraph applies on and after July 1, 2005 to property that is located in the watershed of a body of water most at risk as identified in the department's storm water rules adopted pursuant to section 420-D and that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. This paragraph applies on and after July 1, 2010 to other property that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8.

This section applies to a project or any portion of a project located within an organized area of this State. This section does not apply to agricultural fields. Forest management activities, including associated road construction or maintenance, conducted in accordance with applicable standards of the Maine Land Use Regulation Commission, are deemed to comply with this section. This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

38 § 420-D. Storm water management

A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the department.¹ A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State.

1. Standards. The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed.

2. Review. If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 45 calendar days. If structural means are used to meet those standards, the department shall review the application

¹ PL 2005, ch. 219 included amendments that resulted in a change from multiple permit thresholds to a single, one-acre disturbed permit thresholds. See PL 2005, ch. 218, sec. 8 in the "Unallocated provisions" section on page 7 of this handout for associated transition language.

within 90 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this subsection take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

3. Watersheds of bodies of water most at risk. The department shall establish by rule a list of watersheds of bodies of water most at risk from new development. In regard to lakes, the list must include, but is not limited to, public water supply lakes and lakes identified by the department as in violation of class GPA water quality standards or as particularly sensitive to eutrophication based on current water quality, potential for internal recycling of phosphorus, potential as a cold water fishery, volume and flushing rate or projected growth rate in a watershed. The department shall review and update the list as necessary. A municipality within the watershed of a body of water most at risk may petition the department to have the body of water added to or dropped from the list.

4. Sensitive or threatened regions or watersheds. The department shall establish by rule a list of sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

A. Are susceptible to degradation of water quality or fisheries because of the cumulative effect of reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and

B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; and sections 631 to 636, permits for hydropower projects. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.²

² The following amendment of this paragraph, contained in PL 2005, ch. 602, does not apply to rules regarding storm water management and amendments to rules regarding storm water management that are adopted prior to August 23, 2006:

6. Urbanizing areas. The department shall work with the State Planning Office to identify urban bodies of water most at risk and incorporate model ordinances protective of these bodies of water into assistance provided to local governments.

7. Exemptions. The following exemptions apply.

A. Forest management activities as defined in section 480B, subsection 2B, including associated road construction or maintenance, do not require review pursuant to this section as long as any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Conservation, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30A, section 4401, subsection 4, for the organized portions of the State.

B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section. A manure storage facility that is designed, constructed, managed and maintained in accordance with the United States Department of Agriculture, Natural Resources Conservation Service guidelines does not require review pursuant to this section. For purposes of this paragraph, "manure storage facility" means a facility used primarily for containing manure.

C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. The commissioner shall immediately notify municipalities on the list of municipalities meeting these criteria of new or amended rules adopted by the department pursuant to this article. If a municipality on the list no longer meets these criteria, it must be removed from the list, except that if the municipality no longer meets these criteria due to new or amended department rules, then the municipality remains on the list if:

- (1) The municipality adopts amendments to its ordinances within one calendar year of the effective date of the new or amended department rules;
- (2) The municipality submits the amended ordinances to the commissioner within 45 calendar days of adoption for review; and
- (3) The commissioner determines that the amended ordinances meet or exceed the provisions of this section.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 ~~and are in effect at the time of review as determined by the department~~ or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B

A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.³

D. Repealed. PL 2005, ch. 219, sec. 5.

E. Impervious and disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel do not require review pursuant to this section.

F. Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X do not require review under this section. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

G. Projects involving roads, railroads and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority, do not require review under this section as long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement between the department and the conducting or supervising agency and the project does not require review under article 6. A memorandum of agreement described in this paragraph must be updated whenever the rules concerning storm water management adopted by the department are finalized or updated.

8. Enforcement. Any activity that takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity is a violation of this article. Each day of a violation is a separate offense. A finding that any such violation has

See PL 2005, ch. 605, sec. 11.

³ The following amendment of Section 420-D(7)(C), contained in PL 2005, ch. 602, does not apply to rules regarding storm water management and amendments to rules regarding storm water management that are adopted prior to August 23, 2006:

If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section

and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. The commissioner shall immediately notify municipalities on the list of municipalities meeting these criteria of new or amended rules adopted by the department pursuant to this article. If a municipality on the list no longer meets these criteria, it must be removed from the list. ~~A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.~~ except that if the municipality no longer meets these criteria due to new or amended department rules, then the municipality remains on the list if:

- (1) The municipality adopts amendments to its ordinances within one calendar year of the effective date of the new or amended department rules;
- (2) The municipality submits the amended ordinances to the commissioner within 45 calendar days of adoption for review; and
- (3) The commissioner determines that the amended ordinances meet or exceed the provisions of this section.

A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.

occurred is prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred. Prior to July 1, 1998, the department may not seek to impose civil or criminal penalties for a violation of this section against any person who has made a good faith effort to comply.

9. Rules. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that those rules that qualify as state mandates pursuant to the Constitution of Maine, Article IX, Section 21 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

10. Fees. Repealed. PL 2005, ch. 219, sec. 6.

11. Compensation fee. The department may establish a nonpoint source reduction program to allow an applicant to pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to the payment of the cost and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than \$25,000 per pound of available phosphorus.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

(6) As an alternative to paying a compensation fee, the department may allow an applicant to meet a municipally required mitigation option if the department determines that the local mitigation option will provide at least as much long-term reduction in phosphorus loading to the lake as likely would have occurred under payment of the compensation fee.

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through payment of a compensation fee as provided by rules adopted pursuant to this subsection.

12. Fees. An applicant for a permit under this section shall pay a fee to the department as follows.

A. If structural means of storm water control are used, the fee is \$500 for the first acre of disturbed area, plus \$250 for each additional whole acre of disturbed area.

B. If solely vegetative means of storm water control are used, the fee is \$250 for the first acre of disturbed area, plus \$125 for each additional whole acre of disturbed area.

C. When a permit by rule is required as provided by rules adopted by the department, the fee is \$55.

If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the fee is reduced to \$100 for the first acre of disturbed area, plus \$50 for each additional whole acre of disturbed area.

13. Significant existing sources. The department may require a person owning or operating a significant existing source of storm water to implement a storm water management system. The owner or operator shall obtain approval from the department pursuant to this subsection for the storm water management system.

For the purposes of this subsection, "significant existing source" means a significant existing source of storm water pollution based on quantity or quality standards for storm water from a developed area that was in existence prior to July 1, 1997 and is located in the direct watershed of a waterbody that is

impaired due to urban runoff. The department shall identify significant existing sources as provided in this subsection.

A. The department shall develop a total maximum daily load for the watershed of a waterbody impaired due to urban runoff prior to designating significant existing sources within the watershed.

B. The department shall adopt rules prior to requiring that an owner or operator of a significant existing source within the direct watershed of a specific waterbody obtain approval of a storm water management system. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must include, but are not limited to, the following:

- (1) The name of or other means of identifying the waterbody that is impaired due to urban runoff;
- (2) A list of significant existing sources or a description of the types or classes of significant existing sources;
- (3) A date or schedule indicating when approvals must be obtained; and
- (4) Storm water quantity and quality standards for storm water management systems.

C. The owner or operator of a site designated as a significant existing source shall apply to the department for approval of a storm water management system.

D. "Significant existing source" does not include:

- (1) Types of sources or activities described in subsection 7;
- (2) The developed area of a facility required to meet ongoing storm water management standards pursuant to a storm water general or individual permit issued pursuant to section 413; and
- (3) A municipal storm water conveyance system unless the storm water pollution originates with the conveyance system.

This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

§ 439-B. Contractors certified in erosion control

1. Definition. For purposes of this section, “excavation contractor” means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

2. Certification required. An excavation contractor conducting excavation activity in a shoreland area shall ensure that a person certified in erosion control practices by the department:

- A. Is responsible for management of erosion and sediment control practices at the site; and
- B. Is present at the site each day earth-moving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed.

The requirements of this subsection apply until erosion control measures that will permanently stay in place have been installed at the site or, if the site is to be revegetated, erosion control measures that will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion have been installed.

3. Application. This section does not apply to activities resulting in less than one cubic yard of earth material being added or displaced.

4. Effective date. This section takes effect January 1, 2013.

Unallocated Provisions

PL 2005, ch. 602

Sec. 11. Application. The provisions of this Act that amend the Maine Revised Statutes, Title 38, section 420-D, subsection 5 and subsection 7, paragraph C do not apply to rules regarding storm water management and amendments to rules regarding storm water management that are adopted prior to the effective date of this Act.

PL 2005, ch. 219

Sec. 8. Transition. Prior approval is required pursuant to the Maine Revised Statutes, Title 38, section 420-D if a person constructs, or causes to be constructed, a project that includes one acre or more of disturbed area on or after the effective date of this Act.

1. If a person has a project that required approval prior to the effective date of this Act, the project continues to require approval on and after the effective date of this Act.

2. If a person has a project that did not require approval prior to the effective date of this Act, and the person proposes to construct or cause to be constructed a project that includes one or more acres of disturbed area on or after the effective date of this Act, then approval is required. Only the construction on or after the effective date of this Act requires prior approval.

3. A disturbed area of less than one acre continues to be counted toward the one-acre permit threshold under this section following permanent stabilization to the extent it is considered developed area as defined in rules adopted by the Department of Environmental Protection.

Laws 1995, ch. 704

Sec. B-3. Memorandum of agreement. The Department of Environmental Protection shall conclude a memorandum of agreement with the Department of Transportation by July 1, 1997 specifying the storm water quality and quantity standards to be applied to projects exempt pursuant to the Maine Revised Statutes, Title 38, section 420-D, subsection 7, paragraph G.

Sec. B-4. Transition provisions applicable to the Maine Revised Statutes, Title 38, section 420-D. Impervious and disturbed areas created prior to the effective date of the Maine Revised Statutes, Title 38, section 420-D are not counted when determining the amount of impervious area or disturbed area on a parcel. If review is required for impervious areas or disturbed areas created on or after the effective date of Title 38, section 420-D, areas created prior to the effective date of Title 38, section 420-D are not reviewed except to the extent necessary to ensure that controls intended to address the new areas function adequately.

New construction on an impervious area created prior to the effective date of Title 38, section 420-D is not counted when determining the amount of impervious area on a parcel.

Sec. C-1. Rule-making authority. The Department of Environmental Protection has authority to adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 to implement Title 38, section 420-D; section 484, subsection 2, paragraph B; and section 485-A, subsection 1-C, as enacted by this Act and in accordance with the terms of those sections. Such rules, except those adopted pursuant to Title 38, section 420-D, subsection 11, must be provisionally adopted and submitted to the Legislature for review as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A no later than February 28, 1997. Rulemaking to update the first comprehensive lists of "watersheds of bodies of water most at risk from new development" and "sensitive or threatened regions of watersheds" is not considered major substantive rulemaking pursuant to Title 5, chapter 375, subchapter II-A.

Sec. C-2. Effective date. This Act takes effect July 1, 1997, except section 1 of this Part takes effect 90 days after adjournment of the Second Regular Session of the 117th Legislature. The following provisions take effect September 19, 1997: Part A, section 10 that amends the Maine Revised Statutes, Title 38, section 484, subsection 4; Part A, section 11 that enacts Title 38, section 484, subsection 4-A; and that portion of Part B, section 2 that enacts Title 38, section 420-D.

PL 1997, c. 603, § 9 [effective June 30, 1998]

Sec. 9. Retroactivity. That section of this Act that amends Public Law 1995, chapter 704, Part C, section 2 applies retroactively to July 1, 1997.⁴

Laws 1995, ch. 502

Sec. 17. Use of compensation fees. Rules adopted by the Department of Environmental Protection pursuant to section 4 of this Act must provide guidance on the use of compensation fees to organizations authorized by the department to receive those fees. In developing the rules, the department shall consider appropriate percentages that should be allocated to project implementation, education, technical assistance and other project components.

See PL 2005, ch. 605, sec. 11.

⁴This refers to the underlined portion of the following: "This Act takes effect July 1, 1997, except section 1 of this Part takes effect 90 days after adjournment of the Second Regular Session of the 117th Legislature. The following provisions take effect September 19, 1997: Part A, section 10 that amends the Maine Revised Statutes, Title 38, section 484, subsection 4; Part A, section 11 that enacts Title 38, section 484, subsection 4-A; and that portion of Part B, section 2 that enacts Title 38, section 420-D."

Related Provisions

30-A M.R.S.A. § 4452(7)

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the State Planning Office under section 4221 as familiar with court procedures, may enforce the provisions of the natural resources protection laws, Title 38, chapter 3, subchapter I, article 5-A and Title 38, section 420-C, by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.⁵

⁵Title 38, chapter 3, subchapter I, article 5-A is the Natural Resources Protection Act, and Title 38, section 420-C is the Erosion and Sedimentation Control Law. Title 38, section 349, subsection 2 reads:

"2. Civil penalties. Any person who violates any provision of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is subject to a civil penalty, payable to the State, of not less than \$100 nor more than \$10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation."